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Sixty-seventh session
Agenda item 105
Measures to eliminate international terrorism

Security Council
Sixty-eighth year

Identical letters dated 21 February 2013 from the Permanent Representative of the Syrian Arab Republic to the United Nations addressed to the Secretary-General and the President of the Security Council

On instructions from the Government of the Syrian Arab Republic, I should like to draw your attention to the following information:

Today, Damascus was hit by a series of terrorist bombings, the most devastating of which occurred in Thawrah Street, on the outskirts of the Mazra'ah residential quarter. Preliminary estimates indicate that 53 civilians were killed and hundreds injured in the attack. The victims included children and students, some of whom are in critical condition. The terrorist bombing caused substantial damage to Hayat Hospital and its medical equipment and Abdullah bin Zubayr School, and burned many cars and other vehicles. At that same location, the competent authorities stopped a car that was carrying containers packed with tons of explosives, and arrested the would-be suicide bomber who was driving it.

Those attacks coincided with others in which mortar shells were fired at several residential buildings, causing material damage. Yesterday, the terrorist groups once again attacked Syria's athletes, firing two mortar shells at Tishrin Sports City. One shell struck Tishrin Stadium, while the other exploded near Tishrin Hotel, which is used for housing athletes. Football player Yusuf Sulayman was killed and several other players and staff were injured as they were preparing for a domestic league match.

These cowardly terrorist attacks, which targeted crowded residential areas and major intersections in the capital, Damascus, were the latest in a series of attacks that have taken place in Damascus and several Syrian governorates. They were carried out by armed terrorist groups affiliated with Al-Qaida that are receiving financial and logistical support and political and media cover from States in the region and outside it. The actions of those States are contrary to their obligations under international law and United Nations resolutions concerning counter-terrorism.

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The credibility of the counter-terrorism campaign, which has always been a concern of the international community and the focus of much effort on its part, is facing an unprecedented test. Terrorism in its most savage form is striking Syrian civilians, without mercy and indiscriminately, heedless of whether its victims are the elderly, children or students. In its previous letters addressed to the Security Council and the Secretary-General, Syria called on Member States to condemn strongly and unequivocally these savage terrorist crimes and to hold accountable and restrain those States that are supporting the terrorists, regardless of the form such support may take.

The Syrian Arab Republic hopes that, on this occasion, the Security Council will be able to take a resolute stance that affirms its commitment to countering terrorism, regardless of where or when it occurs. By condemning in clear terms this terrorist attack, the Security Council would send a stern message to the terrorist groups and those who support them that no double standards are applied with regard to terrorist crimes, regardless of where they are committed. Should the Council yet again overlook such an act of terrorism, it would confirm suspicions that it is not serious about countering terrorism and implementing its resolutions in that regard. That would also be construed as providing political cover for these terrorist crimes.

The credibility of the international community is at stake. Failure to condemn these acts of terrorism would be unjustifiable, from both a moral and humanitarian perspective, and would be tantamount to ignoring the suffering of the Syrian victims of terrorism and their families. It would only provide fresh evidence that double standards are part and parcel of the Council's approach to international terrorism, and would confirm once again the extent to which certain regional and international parties are complicit in the systematic terrorism that is being directed against the Syrian State and people.

Syria affirms that these terrorist murderers will not deter it from protecting its citizens. It will continue to fight terrorism, even as its implements its political programme to resolve the crisis, because this programme, which is based on dialogue among Syrians, is the best way of resolving the crisis.

I should be grateful if this letter could be circulated as a document of the General Assembly, under agenda item 105, and of the Security Council.

(*Signed*) Bashar **Ja'afari**
Ambassador
Permanent Representative

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General Assembly
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Agenda items 34, 39, 65, 67, 69, 83 and 84

Protracted conflicts in the GUAM area and their implications for international peace, security and development

The situation in the occupied territories of Azerbaijan

Promotion and protection of the rights of children

Elimination of racism, racial discrimination, xenophobia and related intolerance

Promotion and protection of human rights

The rule of law at the national and international levels

The scope and application of the principle of universal jurisdiction

Security Council
Sixty-eighth year

Letter dated 21 February 2013 from the Permanent Representative of Azerbaijan to the United Nations addressed to the Secretary-General

As you are aware, the most serious international crimes, such as war crimes, crimes against humanity and genocide, have been committed in the course of the ongoing aggression of the Republic of Armenia against the Republic of Azerbaijan. Twenty-one years ago, an unprecedented massacre was committed against the Azerbaijani population in the town of Khojaly. On the night of 25 to 26 February 1992, the armed forces of Armenia, with the support of irregular armed bands and terrorist groups, as well as with the direct participation of the infantry guards regiment No. 366 of the former Union of Soviet Socialist Republics, implemented the seizure of Khojaly. In one night, more than 600 civilians were killed in that town, only because they were Azerbaijanis. Not even women, children and elderly were spared by the invading forces.

I have the honour to submit to you a memorandum entitled "The crime in Khojaly: perpetrators, qualification and responsibility under international law". Having submitted this memorandum, the Government of the Republic of Azerbaijan requests the Secretary-General and the States Members of the United Nations to

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support national efforts aimed at putting an end to impunity for the serious crimes committed in the course of the aggression of the Republic of Armenia against the Republic of Azerbaijan.

It is obvious that impunity still enjoyed by the perpetrators of the crimes continues to impede progress in achieving the long-awaited peace and reconciliation between Armenia and Azerbaijan. Therefore, the establishment of truth in respect to the serious violations of international humanitarian and human rights law committed during the conflict, the provision of adequate and effective reparations to victims and the need for institutional actions to prevent the repetition of such violations are all necessary adjuncts to true conflict resolution. Consequently, ending impunity is essential not only for the purposes of identifying responsibility of parties to the conflict and individual perpetrators, the achievement of which is undoubtedly imperative per se, but also for ensuring sustainable peace, truth, reconciliation, the rights and interests of victims and the well-being of society at large.

The attached memorandum should also be considered as a response to the lying interpretation of the tragic events that took place in the town of Khojaly by the representatives of Armenia during the open debate of the Security Council on the protection of civilians in armed conflict, held on 12 February 2012 (S/PV.6917 (Resumption 1)).

I should be grateful if you would have the present letter and its annex circulated as a document of the General Assembly, under the agenda items 34, 39, 65, 67, 69, 83 and 84, and of the Security Council.

(*Signed*) Agshin **Mehdiyev**
Ambassador
Permanent Representative

Annex to the letter dated 21 February 2013 from the Permanent Representative of Azerbaijan to the United Nations addressed to the Secretary-General

The crime in Khojaly: perpetrators, qualification and responsibility under international law

Introduction

1. At the end of 1987, the Soviet Socialist Republic of Armenia openly laid claim to the territory of the Nagorno-Karabakh (Daghlyq Garabagh) Autonomous Oblast of the Soviet Socialist Republic of Azerbaijan. Contrary to the Constitution of the Soviet Union, which guaranteed the territorial integrity and inviolability of borders of the Union Republics, both the Armenian Soviet Socialist Republic and members of the Armenian community of the territory adopted a number of decisions to institute the process of unilateral secession of the autonomous region from Azerbaijan. At the end of 1991 and the beginning of 1992, Armenia initiated combat operations on the territory of Azerbaijan. As a result, a significant part of the territory of Azerbaijan, including the Daghlyq Garabagh region and seven adjacent districts, was occupied by Armenia.

2. In 1993 the United Nations Security Council adopted a series of four resolutions condemning the use of force against Azerbaijan and the occupation of its territories by Armenian forces, reaffirming respect for the sovereignty, territorial integrity and inviolability of the international borders of Azerbaijan, confirming that Daghlyq Garabagh is part of Azerbaijan and demanding the immediate, full and unconditional withdrawal of the occupying forces from all its territories.[1] The same position has been adopted by other international organizations.

3. The war led to the deaths and wounding of thousands of people, while hundreds of thousands became refugees and were forcibly displaced and several thousand disappeared without trace. The capture of Khojaly was particularly tragic. Before the conflict, 7,000 people lived in this town of the Daghlyq Garabagh region of Azerbaijan. From October 1991, the town was entirely surrounded by the Armenian forces. Over the night of the 25 to 26 February 1992, following massive artillery bombardment of Khojaly, the assault on the town began from various directions. The attack and capture of the town involved the extermination of hundreds of Azerbaijanis, including women, children and the elderly, and thousands of civilians were wounded and taken hostage, many of whom remain missing, while the town was razed to the ground.

Perpetrators of the crime

4. There have been numerous instances of States disguising their role in the forcible capture of the territory of another State and of denying the crimes committed in that territory. These features are evidenced in the policies and practices followed by Armenia. It denies both involvement with the armed conflict, along with the fact that it has anything to do with controlling these territories, and

[1] Resolutions 822 (1993), 853 (1993), 874 (1993) and 884 (1993).

the fact of occupation within the meaning of international law. Thus, according to the incumbent President of Armenia, Serzh Sargsyan, "only volunteers fought for Nagorno-Karabakh". At the same time, Armenia, in his words, acted as "a guarantor of the security of Nagorno-Karabakh", prepared to intervene immediately in the event of the outbreak of new war.[2] The question of Armenia providing guarantees is also mentioned in the country's national security strategy of 7 February 2007.[3] No explanation is provided, however, as to how these guarantees, which affect a portion of Azerbaijan's territory, fit into international law.

5. Generally speaking, attempts by Armenia to disguise its aggression against a neighbouring State and thereby to assert its innocence for crimes committed in the course of this aggression are unlikely to be taken seriously, given the incontrovertible evidence testifying to the diametrically opposite situation. In addition to the facts at the disposal of the Government of Azerbaijan attesting to the direct involvement of the Armenian armed forces in the military hostilities against Azerbaijan and the presence of these forces in the occupied territories, issues that merit a separate and careful investigation, the assessment of Armenia's role given by other States, international organizations and independent observers is also completely unequivocal.

6. Thus, the report by the Human Rights Watch/Helsinki entitled *Seven Years of Conflict in Nagorno-Karabakh* made it clear that "while there are probably volunteers to the rebel forces from among the Republic of Armenia population, active duty members of the Armenian armed forces, including conscripts, have been ordered by their military commanders to participate in hostilities in Azerbaijan against Azerbaijani armed forces".[4] The report concluded by stating that "as a matter of law, Armenian troop involvement in Azerbaijan makes Armenia a party to the conflict and makes the war an international armed conflict, as between the Government of Armenia and Azerbaijan".[5]

7. Apart from the denial of its responsibility for the occupation of and military presence in the territories of Azerbaijan, official Yerevan spares no efforts in representing matters with regard to the massacre in Khojaly as if it were the Azerbaijanis themselves who allegedly obstructed the evacuation of the civilian population from the area of military hostilities and, even worse, gunned down their own fellow countrymen in order to exploit the large numbers of civilian casualties for their own internal political ends.[6] Thus, in their statements at the United Nations Security Council on 12 February 2013, the representatives of Armenia once again referred to the then President of Azerbaijan, Ayaz Mutalibov, who allegedly made the opposition Popular Front of Azerbaijan responsible for the slaughter of the civilians of the city of Khojaly.[7] However, the Armenian propaganda fails to recall that the former President of Azerbaijan has consistently protested against such a blatant misinterpretation of his words. In his interviews and comments, which the Armenian propaganda prefers not to mention at all, Mr. Mutalibov has repeatedly stated that the perpetrators of the massacre in Khojaly were the Armenians and that

[2] "Caucasus Context 2007", vol. 4, issue 1, pp. 43-44. See also the message by Serzh Sargsyan of 1 September 2007, "Hayinfo" website.

[3] Available from www.mil.am/eng/?page=49.

[4] Human Rights Watch/Helsinki, *Seven Years of Conflict in Nagorno-Karabakh*, p. 92 (1994).

[5] Ibid., p. 73. See also A/66/787-S/2012/289, annex, paras. 15-27.

[6] See A/66/708-S/2012/117.

[7] See S/PV.6917 (Resumption 1), pp. 43 and 70.

he has never attributed the guilt for the commission of that crime to the Popular Front of Azerbaijan. According to Mr. Mutalibov, "references to [his] words that the Popular Front organized the fall of Khojaly or conduced to it are outrageous lie and absurd".[8]

8. There are more than sufficient facts and reports from various sources, including eyewitnesses of the events, Governments and intergovernmental and non-governmental organizations, that testify to the responsibility of Armenia and its political and military leadership and subordinate local armed groups for the crimes committed in Khojaly.

9. In paragraph 87 of its judgement of 22 April 2010,[9] the European Court of Human Rights pointed out that:

> It appears that the reports available from independent sources indicate that at the time of the capture of Khojaly on the night of 25 to 26 February 1992 hundreds of civilians of Azerbaijani ethnic origin were reportedly killed, wounded or taken hostage, during their attempt to flee the captured town, *by Armenian fighters attacking the town* (emphasis added).

10. In her letter dated 24 March 1997 addressed to the Minister for Foreign Affairs of Armenia,[10] the Executive Director of the Human Rights Watch/Helsinki responded as follows to attempts by the Armenian propaganda to obfuscate this human rights organization with its fabrications:

> Our research and that of the Memorial Human Rights Center found that the retreating militia fled Khojaly along with some of the large groups of fleeing civilians. Our report noted that by remaining armed and in uniform, the Azerbaijani militia may be considered as combatants and thus endangered fleeing civilians, even if their intent had been to protect them. *Yet we place direct responsibility for the civilian deaths with Karabakh Armenian forces. Indeed, neither our report nor that of Memorial includes any evidence to support the argument that Azerbaijani forces obstructed the flight of, or fired on Azeri civilians* (emphasis added).

11. According to the Armenian author Markar Melkonian, who dedicated his book to his brother, the well-known international terrorist Monte Melkonian, who personally took part in the assault on Khojaly, the town "had been a strategic goal, but it had also been an act of revenge".[11] Melkonian particularly mentions the role of the fighters of the two Armenian military detachments "Arabo" and "Aramo" and describes in detail how they butchered the peaceful inhabitants of Khojaly. Thus, as he puts it, some inhabitants of the town had almost made it to safety, after fleeing for nearly six miles, when "[Armenian] soldiers had chased them down". The soldiers, in his words, "unsheathed the knives they had carried on their hips for so long, and began stabbing".[12]

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[8] Available from www.regnum.ru/news/223355.html and http://interfax.az/print/566666/ru.

[9] Available from http://hudoc.echr.coe.int/sites/eng/pages/search.aspx?i=001-98401.

[10] Available from www.hrw.org/news/1997/03/23/response-armenian-government-letter-town-khojaly-nagorno-karabakh.

[11] Markar Malkonian, *My Brother's Road: An American's Fateful Journey to Armenia* (London and New York, 2005), p. 214.

[12] Ibid., pp. 213-214.

12. It should be particularly noted that the Khojaly events took place in a period when the incumbent president Serzh Sargsyan of the Republic of Armenia served as the head of the illegal separatist regime's "Self-Defence Forces Committee" and, accordingly, his recollections constitute one of the most important sources of evidence. The following words by Mr. Sargsyan leave no doubt as to the question of the perpetrator of the crime in Khojaly:

> Before Khojali, the Azerbaijanis thought that they were joking with us, they thought that the Armenians were people who could not raise their hand against the civilian population. We were able to break that [stereotype]. And that's what happened. And we should also take into account that amongst those boys were people who had fled from Baku and Sumgayit.[13]

13. Recently, some 12 years later, the interviewer of Mr. Sargsyan, British journalist Thomas de Waal, published the full transcript of his conversation with the future president of Armenia,[14] the contents of which offer the most effective rebuff to the fabrications of Armenian propaganda. Take, for example, the following words by Mr. Sargsyan, which need no further comment:

> Yes, it's true that there were civilians in Khojaly. But there were also soldiers together with the civilians. And when a shell flies through the air, it doesn't distinguish between civilian and soldier, it has no eyes. If the civilian population remains behind, even when they have a perfectly good opportunity to leave, it means that they are also taking part in the hostilities.

14. Mr. Sargsyan would most probably refrain from voicing such unconvincing arguments if he were aware of the universally recognized laws of the conduct of military operations, including, above all, those mandating that a clear distinction be maintained between civilians and combatants and prohibiting attacks of an indiscriminate nature. Having made the incontrovertible observation that an artillery shell flying through the air has no eyes, the current president of Armenia could hardly then dispute the fact that those who choose the target and fire the shell against it are the ones with eyes.

15. Furthermore, Mr. Sargsyan debunked the myth about the corridor allegedly left open by the assailants for the civilian population of Khojaly. Thus, answering the interviewer's question on this issue, he readily concedes that "generally speaking, this was after Khojaly", since, at the time, "there was a certain amount of ethnic cleansing", as "it's impossible to do this any other way". In answer to de Waal's question as to whether he had any regrets about the death of thousands of people, Mr. Sargsyan answered quite unabashedly: "I have absolutely no regrets", since "such upheavals are necessary, even if thousands have to die". These words of a person holding the highest political and military post in Armenia speak for themselves and disprove any attempt to deny Armenia's responsibility for the crimes committed against Azerbaijani civilians during the conflict.

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[13] Thomas de Waal, *Black Garden: Armenia and Azerbaijan through Peace and War* (New York and London, 2004), p. 172.

[14] Available from http://carnegieendowment.org/2012/02/24/president-interview-andtragic-anniversary/9vpa.

Qualification of the crime

16. The full range of international legal principles is applicable to the situation concerning the territories of Azerbaijan currently under the occupation of Armenia, that is, the Nagorno-Karabakh region and the surrounding territories seized during the armed conflict of the early 1990s. Such legal principles include those relating to the use of force; international humanitarian law; international human rights law and international responsibility.[15]

17. There are sufficient grounds to conclude that the Government of the Republic of Armenia and subordinate forces for which it is liable under international law are responsible for serious violations of international humanitarian and human rights law amounting to crimes under international law. The violations of the rules of war by the Armenian side include, inter alia, indiscriminate attacks, including the killing of civilians, the taking and holding of hostages, and the mistreatment and summary execution of prisoners of war and hostages.[16]

18. In its relevant resolutions adopted in 1993 in response to the illegal use of force against Azerbaijan and occupation of its territories,[1] the Security Council made specific reference to violations of international humanitarian law, including the displacement of a large number of civilians in Azerbaijan, attacks on civilians and the bombardment of inhabited areas. In its judgement of 22 April 2010,[9] the European Court of Human Rights qualified the massacre of the Azerbaijani civilian population of the Khojaly town as "acts of particular gravity which may amount to war crimes or crimes against humanity".

19. The official investigation conducted in Azerbaijan has found that the following elements of the crime of genocide, as defined under international law, are present with regard to the attacks on civilians in Khojaly: the *actus reus* consisting of killing and causing serious bodily or mental harm; the existence of a protected group being targeted by the authors of the criminal conduct; and the specific genocidal intent to annihilate, in whole or in part, a group distinguished on racial, ethnic, national or religious grounds. According to the findings of the investigation, the following requirements are met for the purpose of sustaining the genocidal charges with regard to the crime committed in Khojaly: the clear and convincing proof of the intent to destroy the group in whole or in part; the fact that the destruction that took place in Khojaly was "significant" enough to affect the defined group as a whole; and the crime was committed within a specific geographic locality.

20. It should be noted that both Armenia and Azerbaijan are parties to the Convention on the Prevention and Punishment of the Crime of Genocide.[17]

Responsibility under international law

21. Offences committed during the conflict between Armenia and Azerbaijan entail State responsibility and individual criminal responsibility under international law.

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[15] See A/66/787-S/2012/289, annex, paras. 28-30.

[16] See, Human Rights Watch/Helsinki, *Seven Years of Conflict in Nagorno-Karabakh* (1994).

[17] Armenia became a party to the Genocide Convention on 23 June 1993 and Azerbaijan on 16 August 1996.

22. The key provisions of international responsibility are laid down in the articles on State responsibility adopted by the United Nations International Law Commission on 9 August 2001[18] and commended to States by the General Assembly on 12 December 2001.[19] According to article 1, "every internationally wrongful act of a State entails the international responsibility of that State", while article 2 provides that "there is an internationally wrongful act of a State when conduct consisting of an action or omission (a) is attributable to the State under international law; and (b) constitutes a breach of an international obligation of the State".

23. Article 4 (1) of the articles on State responsibility addresses the question of the attribution of conduct to a State, and declares that:

> The conduct of any State organ shall be considered an act of that State under international law, whether the organ exercises legislative, executive, judicial or any other functions, whatever position it holds in the organization of the State, and whatever its character as an organ of the central government or of a territorial unit of the State.

24. This principle, which is one of long standing in international law,[20] was underlined by the International Court of Justice in the *LaGrand* case,[21] in which the Court declared that "the international responsibility of a State is engaged by the action of the competent organ and authorities acting in that State, whatever they may be" and reiterated in the case concerning the application of the Convention on the Prevention and Punishment of the Crime of Genocide,[22] in which the Court noted that it was:

> One of the cornerstones of the law of state responsibility, that the conduct of any state organ is to be considered an act of the state under international law, and therefore gives rise to the responsibility of the state if it constitutes a breach of an obligation of the state.

25. Comment 6 to article 4 of the articles on State responsibility underlines the broad nature of this principle and emphasizes that the reference to State organs in this provision:

> "Is not limited to the organs of central government, to officials at high level or to persons with responsibility for the external relations of the state. It extends to organs of government of whatever kind or classification, exercising whatever functions, and at whatever level in the hierarchy, including those at provincial or even local level".[23]

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[18] See A/56/10, section IV. See also James Crawford, *The International Law Commission's Articles on State Responsibility. Introduction, Text and Commentaries* (Cambridge, 2002), and James Crawford, Alain Pellet, Simon Olleson (eds.), *The Law of International Responsibility* (Oxford, 2010).

[19] See General Assembly resolution 56/83. See also Assembly resolutions 59/35 and 62/61 and document A/62/62.

[20] See, for example, the *Moses* case, John B. Moore, *International Arbitration*, vol. III, pp. 3127, 3129 (1871).

[21] Provisional Measures, I.C.J. Reports 1999, pp. 9 and 16.

[22] I.C.J. Reports 2007, para. 385. It was held that this principle constituted a rule of customary international law. See also *Immunity from Legal Process of a Special Rapporteur*, I.C.J. Reports 1999, pp. 62 and 87.

[23] See Crawford, *The International Law Commission's Articles on State Responsibility*, p. 95.

26. Similarly, article 5 provides that the conduct of a person or entity which is not an organ of the State under article 4 but which is empowered by the law of that State to exercise elements of governmental authority shall be considered as an act of the State under international law, provided that the person or entity in question was acting in that capacity in the instance in question. Accordingly, activities by armed units of the State, including those empowered so to act, will engage the responsibility of the State. Thus Armenia is responsible internationally for actions (and omissions) of its armed forces in their activities in Azerbaijan.

27. A key element of State responsibility, and one of particular significance for the present purposes, is the rule enshrined in article 8:

> The conduct of a person or group of persons shall be considered an act of a state under international law if the person or group of persons is in fact acting on the instructions of, or under the direction or control of, that state in carrying out the conduct.

28. This provision essentially covers two situations, first, where persons act directly under the instructions of State authorities and, second, where persons are acting under State "direction or control". The latter point is critical. It means that States cannot avoid responsibility for the acts of secessionist entities where in truth it is the State that is controlling the activities of the body in question. The difference between the two situations enumerated in article 8 is the level of control exercised. In the former case, the persons concerned are in effect part of the apparatus of the State insofar as the particular situation is concerned. In the latter case, the power of the State is rather more diffuse.

29. The International Court of Justice addressed the matter in the *Nicaragua* case, in which, in paragraph 115, it was noted that, in order for the State to be responsible for the activities, it would need to be demonstrated that the State "had effective control of the military or paramilitary operation in the course of which the alleged violations were committed".[24] This approach was reaffirmed in the *Genocide Convention* case.[25]

30. Accordingly, the conclusion must be that, due to its initial and continuing aggression against Azerbaijan and persisting occupation of that State's territory, accomplished both directly through its own organs, agents and officials and indirectly through the subordinate separatist regime in the occupied Daghlyq Garabagh region over which the Republic of Armenia exercises the requisite degree of effective control as it is understood under international law, the Republic of Armenia bears full international responsibility for the breaches of international law.

31. The Republic of Armenia's international responsibility, which is incurred by its internationally wrongful acts, involves legal consequences manifested in the obligation to cease such acts, to offer appropriate assurances and guarantees that they will not recur and to provide full reparation for injury in the form of restitution, compensation and satisfaction, either singly or in combination.[26]

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[24] I.C.J. Reports 1986, pp. 14 and 64 to 65

[25] I.C.J. Reports 2007, at para. 398 and following.

[26] See Crawford, *The International Law Commission's Articles on State Responsibility*, pp. 66-68, articles 28, 30, 31 and 34-37.

32. It is essential to note that the crime committed in the town of Khojaly should be seen as a serious breach of obligations under peremptory norms (*jus cogens*) of general international law. The obligations under such norms arise from those substantive rules of conduct that prohibit what has come to be seen as intolerable because of the threat it presents to the survival of States and their peoples and the most basic human values.[27] Among these prohibitions, it is generally agreed that the prohibitions of aggression, the establishment or maintenance by force of colonial domination, genocide, slavery, racial discrimination, crimes against humanity and torture are to be regarded as peremptory.[28] There can be no doubt that Armenia bears full international responsibility for a violation of a number of such prohibitions, as manifested in particular in the criminal acts committed against the civilians and defenders of the town of Khojaly.

33. Serious breaches of obligations under peremptory norms of general international law give rise to additional consequences affecting not only the State bearing the responsibility, but also all other States. As stated in the International Law Commission commentary to the articles on State responsibility, every State, by virtue of its membership in the international community, has a legal interest in the protection of certain basic rights and the fulfilment of certain essential obligations.[29] A significant role in securing recognition of this principle was played by the International Court of Justice in the *Barcelona Traction* case,[30] in which the Court identified the existence of a special category of obligations — obligations towards the international community as a whole. According to the Court, "By their very nature the former [the obligations of a State towards the international community as a whole] are the concern of all States. In view of the importance of the rights involved, all States can be held to have a legal interest in their protection; they are obligations *erga omnes*". In later cases, the International Court has reaffirmed this idea.[31]

34. Inasmuch as all States have a legal interest, particular consequences of a serious breach of an obligation under peremptory norms of general international law include, inter alia, duties of States to cooperate in order to bring to an end such breaches by lawful means and not to recognize as lawful a situation created by a serious breach, nor render aid or assistance in maintaining that situation.[32]

35. Alongside the Republic of Armenia's responsibility as a State for internationally wrongful acts, under the customary and treaty norms of international criminal law, certain acts perpetrated in the context of an armed conflict, including those in the town of Khojaly, are viewed as international criminal offences and

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[27] See A/56/10, comment 3 to article 40 of the articles on State responsibility.

[28] Ibid., comment 5 to article 26 and comments 1-9 to article 40 of the articles on State responsibility.

[29] Ibid., comment 4 to article 1 of the articles on State responsibility.

[30] Case Concerning the Barcelona Traction, Light and Power Company, Limited, I.C.J. Reports 1970, para. 33

[31] See *East Timor*, I.C.J. Reports 1995, p. 102, para. 29; *Legality of the Threat or Use of Nuclear Weapons*, I.C.J. Reports 1996, p. 258, para. 83; and *Application of the Convention on the Prevention and Punishment of the Crime of Genocide*, Preliminary Objections, I.C.J. Reports 1996, pp. 615-616, paras. 31-32. See also A/56/10, comment 4 to article 1 of the articles on State responsibility.

[32] See A/56/10 (Supp), comment 1-14 to article 41 of the articles on State responsibility. See also General Assembly resolution 62/243, para. 5.

responsibility for them is borne on an individual basis by those who participated in the said acts, their accomplices and accessories. It is well known that both the present and former presidents of Armenia, Serzh Sargsyan and Robert Kocharian, together with many other high-ranking political and military officials of that State and leaders of the separatist regime set up by Armenia in the occupied territory of Azerbaijan, personally participated in seizing Azerbaijani lands and in the reprisals against Azerbaijani civilians and militaries. It is clear that, given the scale and gravity of the offences that they committed, the criminal prosecution of these persons would be an inevitable consequence of their crimes.

36. Under article 147 of the Fourth Geneva Convention, which Armenia and Azerbaijan ratified, on 7 June 1993 and 1 June 1993, respectively, a number of acts committed against persons or property protected by that Convention amount to "grave breaches". Article 86 of Additional Protocol I, which Armenia ratified on 7 June 1993, provides that the parties to the Convention and Protocol are under a particular duty to "repress grave breaches". Under article 88 of the Protocol, the parties "shall afford one another the greatest measure of assistance in connection with criminal proceedings brought in respect of grave breaches of the Convention or of this Protocol".

37. Furthermore, serious violations of international human rights and humanitarian law fall under the purview of the principle of universal jurisdiction in international criminal law, which empowers States to establish their jurisdiction over such crimes and, accordingly, provides unavoidability of punishment of the perpetrator, regardless of the place of commission of the crime and the nationality of the perpetrator or of the victim.

Conclusion

38. A response to the large-scale atrocities perpetrated during the Second World War served as the basis for the founding of the United Nations, the proclamation of fundamental values, such as peace and respect for human rights, and the establishment of multinational judicial institutions. The international community, acting chiefly through the United Nations, has proclaimed and set down in international instruments a compendium of fundamental values, such as peace and respect for human rights. The consensus on them was reflected in the adoption in 1948 of the Universal Declaration of Human Rights, according to which "recognition of the inherent dignity and of the equal and inalienable rights of all members of the human family is the foundation of freedom, justice and peace in the world". Furthermore, important steps have been taken for the protection and vindication of rights and the prevention and punishment of crimes that have an international dimension and scope.

39. However, efforts to ensure a peaceful, just and prosperous world have not always been consistent and successful. As a consequence, civilians continue to suffer from inadequate protection and discriminatory treatment in situations of armed conflict. Unfortunately, not all grave violations of international humanitarian and human rights law have received due attention and a response at the international and regional levels.

40. Despite that, the Republic of Azerbaijan is confident that the consistent measures being taken at the national level, as well as the existing international legal

framework, will serve to bring to justice those responsible for the grave offences committed against the civilian population of Azerbaijan during the conflict. It is incontrovertible today that no official or political status cloaks the person concerned with immunity for the most serious international crimes, such as war crimes, crimes against humanity, genocide and ethnic cleansing.

41. Indeed, the overall assessment of the causes and consequences of the war unleashed by the Republic of Armenia against the Republic of Azerbaijan and all existing facts of the tragic events in Khojaly make it absolutely clear that the crimes committed in that town of Azerbaijan was not an isolated or sporadic act, but was part of Armenia's widespread and systematic policy and practice of atrocities, at the core of which are odious ideas of racial superiority, ethnic differentiation and hatred. The intentional slaughter of the civilians in Khojaly was directed at their mass extermination only because they were Azerbaijanis.

42. It is obvious that impunity still enjoyed by the perpetrators of the crimes continues to impede progress in achieving the long-awaited peace and reconciliation between Armenia and Azerbaijan. Therefore, the establishment of truth in respect to gross violations of international humanitarian and human rights law committed during the conflict, the provision of adequate and effective reparations to victims and the need for institutional actions to prevent the repetition of such violations are all necessary adjuncts to true conflict resolution. Consequently, ending impunity is essential not only for the purposes of identifying the responsibility of parties to the conflict and individual perpetrators, the achievement of which is undoubtedly imperative per se, but also for ensuring sustainable peace, truth, reconciliation, the rights and interests of victims and the well-being of society at large.

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Question of the Falkland Islands (Malvinas)

Letter dated 21 February 2013 from the Permanent Representative of the United Kingdom of Great Britain and Northern Ireland to the United Nations addressed to the Secretary-General

In accordance with instructions received from the Government of the United Kingdom of Great Britain and Northern Ireland, I have the honour to refer to the letter dated 31 January 2013 from the Permanent Representative of Argentina to the United Nations addressed to you (A/67/726) transmitting, in an annex, a special communiqué on the question of the Falkland Islands (Malvinas), adopted at the twenty-second Ibero-American Summit, held in Cadiz, Spain, on 16 and 17 November 2012.

The United Kingdom recalls its letters to the Secretary-General of 17 January 2013 (A/67/703) and 27 January 2012 (A/66/677). The United Kingdom has no doubt about its sovereignty over the Falkland Islands, South Georgia and the South Sandwich Islands; the historical facts and legal position are clear.

The relationship of association between the United Kingdom and the Falkland Islands is based on mutual consent and the principle of self-determination, which is enshrined in Article 1.2 of the Charter of the United Nations and which underlies our position on the sovereignty of the Falkland Islands. The right of self-determination for all peoples is set out in common article 1 of the International Covenant on Civil and Political Rights and the International Covenant on Economic, Social and Cultural Rights, yet Argentina continues to deny that these fundamental human rights apply to the people of the Falkland Islands. The United Kingdom remains committed to defending the rights of the people of the Falkland Islands to determine their own political, social and economic future. We urge the Government of Argentina to respect the outcome of the referendum to be held on the Islands in March 2013. There can be no negotiation on the sovereignty of the Falkland Islands unless and until such time as the Falkland Islanders so wish.

South Georgia and the South Sandwich Islands is a separate British Overseas Territory that is not considered under the Falkland Islands at the United Nations and is not a listed territory within the Decolonization Committee. The United Kingdom formally took possession of these islands in 1775 and, with the exception of six weeks illegal occupation in 1982, has had uninterrupted possession ever since. The Republic of Argentina never protested British sovereignty over South Georgia and the South Sandwich Islands until it conceived its claim to South Georgia in 1927 and to the South Sandwich Islands in 1948. In the 1940s and 1950s, the United

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Kingdom offered to refer the issue of sovereignty over South Georgia and the South Sandwich Islands to the International Court of Justice or to international arbitration for settlement. Regrettably, the Republic of Argentina, without explanation, rejected all of these offers and refused to accept the jurisdiction of the International Court of Justice in this matter.

The Government of the United Kingdom rejects any suggestion that hydrocarbons exploration in Falkland Islands waters amounts to unilateral action by the Government of the United Kingdom and is being carried out in contravention of General Assembly resolution 31/49 of 1976. The Government of the United Kingdom strongly supports the Government of the Falkland Islands in developing its own economy. The decision to exploit its natural resources was made by the Falkland Islands Government, in accordance with the right of self-determination under international law, as expressly contained in common article 1 of the International Covenant on Civil and Political Rights and the International Covenant on Economic, Social and Cultural Rights. All activities related to hydrocarbons on the continental shelf of the Falkland Islands are regulated by legislation of the Falkland Islands Government, in strict accordance with the United Nations Convention on the Law of the Sea.

The Government of the United Kingdom regrets the reduction in cooperation in South Atlantic affairs over recent years. It notes that in 2007 the Government of Argentina chose to withdraw from the 1995 United Kingdom-Argentina Joint Declaration on Cooperation over Offshore Activities in the South West Atlantic. It also notes that Argentina has refused to participate in fisheries cooperation under the South Atlantic Fisheries Commission, despite the serious impact on the environmental sustainability of fish stocks in the South Atlantic.

The United Kingdom also recalls its letter to the Secretary-General of 22 February 2012 (A/66/706), in which the United Kingdom unequivocally rejected unfounded assertions of reinforcing its military presence in the South Atlantic. The United Kingdom had a minimal military presence in the South Atlantic prior to the Republic of Argentina's illegal invasion of the Falkland Islands in 1982. The Republic of Argentina did not abide by the Security Council resolutions of 1982 calling on it to withdraw its forces peacefully; and it had to be forcibly removed. The United Kingdom military presence increased after 1982 due to the direct and continued threat posed to the Falkland Islands and its people by the Republic of Argentina. Since then, the United Kingdom has maintained a presence designed solely to reassure and to protect the rights of the Falkland Islanders to determine their own political, economic and cultural futures.

The Government of the United Kingdom remains open to discussions with the Government of Argentina on a whole range of issues relating to cooperation in the South Atlantic. The Government of the United Kingdom will continue to encourage the Government of Argentina and the Falkland Islands Government to foster an environment of mutual cooperation between the Falkland Islands and Argentina, using the formula on sovereignty contained in the United Kingdom-Argentina joint statement of 19 October 1989.

I should be grateful if you would circulate the text of the present letter as a document of the General Assembly, under agenda item 45.

(*Signed*) Mark **Lyall Grant**